

I. SUMMARY OF THE INCIDENT

On July 17, 2015, Chicago Police Officers A and B detained complainant, Subject 1, for loitering at the corner of W. Huron Street and N. Homan Avenue. She was placed in handcuffs, put in their squad car and driven around before being released without charges. Officer B allegedly used profanity; insulted her sexual orientation, took and broke her cellphone, and both officers allegedly caused injuries to her wrists and elbow. (Atts. 1, 8, 9)

II. ALLEGATIONS

The complainant, Subject 1, made a telephone call to the Independent Police Review Authority (IPRA) on July 17, 2015 at approximately 3:46 pm, relative to an allegation of excessive force that occurred on July 17, 2015, at approximately 3:00 pm. Subject 1 alleged that on July 17, 2015, at approximately 3:00 pm, near the corner of W. Huron Street and N. Homan Avenue:

A. Officer B Star XXXX:

Allegation 1: Stopped Subject 1 without justification.

Allegation 2: Threatened to file false criminal charges against the complainant, Subject 1.

Allegation 3: Made derogatory comments regarding Subject 1's sexual orientation.

Allegation 4: Failed to provide his name and star number when requested by Subject 1.

Allegation 5: Handcuffed Subject 1 too tightly, causing injury to both of her wrists.

Allegation 6: Damaged Subject 1's cellular telephone.

Allegation 7: Injured Subject 1's right upper arm when he and Officer A removed Subject 1 from their police vehicle.

Allegation 8: Failed to document his contact with Subject 1.

B. Officer A Star XXXXX:

Allegation 1: Stopped Subject 1 without justification.

Allegation 2: Injured Subject 1's right upper arm when he and Officer B removed Subject 1 from their police vehicle.

Allegation 3: Failed to document the stop of Subject 1.

III. APPLICABLE RULES AND LAWS

Rule 1: Prohibits the, "Violation of any law or ordinance."

Rule 2: Prohibits, "Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department."

Rule 6: Prohibits, "Disobedience of an order or directive, whether written or oral."

Rule 8: Prohibits, "Disrespect to or maltreatment of any person, while on or off duty."

Rule 9: Prohibits, "Engaging in any unjustified verbal or physical altercation with any person, while on or off duty."

Rule 37: Prohibits, "Failure of a member, whether on or off duty, to correctly identify himself by giving his name, rank and star number when so requested by other members of the Department or by a private citizen."

Chicago Police Department Special Order SO4-13-09, Contact Information System

This order states in part, "During an Investigatory Stop, the sworn member may only temporarily restrict a person's freedom of movement as long as reasonably necessary to dispel or confirm the member's reasonable articulable suspicion of criminal activity. The subject cannot continue to be detained solely for the purpose of obtaining the results of a name check of the subject."

Chicago Police Department General Order G03-02, Use of Force Guidelines

This order states in part, "Department members will use an amount of force reasonably necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect themselves or others from injury."

The Fourth Amendment to the United States Constitution; Article I, section 6 of the Illinois Constitution of 1970 protects against unreasonable search and seizures.

IV. SUMMARY OF THE INVESTIGATION

In an interview with IPRA on July 17, 2015, **Complainant Subject 1** stated that she was walking on Homan Avenue with her friend, Civilian 1. According to Subject 1, she had stopped to speak to her friend "Civilian 2" and noticed she was being followed by a black, unmarked police SUV with two officers inside (later identified as Officers B and A). Subject 1 related that Officer B told her to stop and she asked why. Subject 1 indicated that Officer B responded stating something to the effect of, "Because you did not come over when I told you." Subject 1 related that she then took out her cellphone and informed the officers she was recording. Subject 1 stated that Officer B then exited the vehicle to

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grab her phone and throw it on the ground before placing it in his pocket. Subject 1 then alleged that Officer B pushed her against a fence, handcuffed her, and put her in the vehicle's backseat. According to Subject 1, Officer A then exited the vehicle's passenger seat and moved to the driver's seat while Officer B searched the area where Subject 1 had been standing. Subject 1 reported that during this time, Officer A drove around while she was in the car before returning to Officer B's location. Subject 1 further related that while Officer A was driving her around, he yelled at Subject 1 for not cooperating. Once they returned to the original location, Subject 1 stated that Officer A exited the vehicle and searched the area while Officer B sat in the vehicle and informed Subject 1 that she was stopped for being in a high drug area. According to Subject 1, she informed Officer B that she does not have a drug history and he responded by telling her he could make her have a drug history. Additionally, Subject 1 related that she refused to identify herself to Officer B and that Officer A re-entered the vehicle with her and Officer B.

According to Subject 1, she was held in the police car for approximately 45 minutes while both Officer B and Officer A yelled at her and threatened to arrest Subject 1 for loitering. Subject 1 further related that Officer B made a disparaging remark regarding her sexual orientation after he observed two females walking by the vehicle and told Subject 1, "I bet you'd like to hit that." Subject 1 related that she replied, "I probably already did," to which Officer B responded, "Would you like to share" and went on to imply that Subject 1 would want to have sex with Officer B. Furthermore, Subject 1 alleged that she and Officer B argued over why she was stopped and he refused to provide his identity to her. Next, Subject 1 stated that Officer B tried to get her to exit the vehicle as she was making demands that he arrest her since she had been held for so long. According to Subject 1, both officers opened the back door to the vehicle and pulled her from it, causing scratches to her upper right elbow. At the point, Subject 1 related that she saw Officer B's nametag to determine his last name. Subject 1 alleged that both officers used profanity throughout her interactions with them and she denied that she was resisting the officers' efforts to restrain her. Subject 1 further indicated that Officer B applied handcuffs too tightly, causing lumps on right wrist and lost feeling in her left wrist and thumb, which was bandaged and in a sling at the time of her IPRA statement. Subject 1 related that she was treated for her injuries at Hospital and that a CPD Evidence Technician photographed her injuries.

Lastly, Subject 1 stated that Civilian 1 was walking ahead of Subject 1, resulting in Civilian 1 not witnessing Subject 1's initial interaction with Officers B and A. However, Subject 1 related that Civilian 1 observed Subject 1 being detained in the vehicle and her subsequent release. Furthermore, Subject 1 reported that two elderly females at a home on Homan Avenue witnessed the initial detention and Subject 1 heard them state, "That isn't right." Subject 1 indicated that she does not know her friend "Civilian 2's" real name or exact address but Civilian 2 had witnessed a police vehicle following Subject 1. (Atts. 8,9)

In a **Deposition** taken on 08/22/2016 for XX-XX-XXXXXX, the complainant **Subject 1** related that on July 17, 2015, she was visiting friends named "Civilian 2" (also referred to as "Civilian 2")

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and Civilian 3 near the intersection of Homan and Huron.¹ According to Subject 1, when she arrived at the house Civilian 2 and Civilian 3 gave her and Civilian 1 money to go to the store. Subject 1 related that when they started walking, Civilian 1 saw police nearby. Subject 1 stated that she walked approximately one house-length before the police officers inside of their car called for her to come over but she kept walking. According to Subject 1, the driver of the police vehicle, a black male (later identified as Officer B), was trying to get Subject 1 to stop so she asked him why. Subject 1 related that the second officer in the police vehicle was a Hispanic male (later identified as Officer A). Additionally, Subject 1 reported that two elderly ladies were sitting in the front porch of a home near where this occurred. After ignoring the officers' requests to stop, Subject 1 related that the officers "jumped" out of the police vehicle and that Officer B grabbed and threw Subject 1's cellphone, threw her against a gate, placed her in handcuffs, and searched Subject 1 while she argued with Officer B about why she was stopped. According to Subject 1, Civilian 1 had kept walking while periodically looking back at Subject 1.

Next, Subject 1 stated that Officer B put her cellphone in his pocket and Officer A put Subject 1 in the backseat of the police vehicle. Subject 1 related Officer A drove down Homan, turned into an alley, and returned to Huron where he stopped while Subject 1 was in the vehicle and arguing with Officer A. While they were initially driving away, Subject 1 indicated that she observed Officer B searching for something on the ground. Once Subject 1 and Officer A returned to the police vehicle, Officer B approached them and asked Subject 1 for her name. Subject 1 related that she refused to give her name and instructed the officers to take her to the police station. Then, Officer A exited the vehicle and searched the ground while Officer B got into the car. Subject 1 related that two young women walked past the vehicle and Officer B made sexually explicit comments to Subject 1 after which she told him to take her to the police station. Additionally, Subject 1 stated that she asked to have her handcuffs loosened but Officer B refused. When Officer A re-entered the vehicle, he stated he did not find anything, Officer B exited the vehicle, opened the car door near Subject 1, and pulled Subject 1's arm. Officer A then also got out of the car and started pulling on Subject 1's arm. According to Subject 1, Officer B made a hard pull to get Subject 1 out of the vehicle, threw her against the vehicle, and put her phone into her pocket. Subject 1 reported that as Officer B was removing her handcuffs, she asked for his name and badge number which he refused. However, Subject 1 related that she could see Officer B's name on his chest and memorized the car's license plate.

According to Subject 1, Civilian 1 had returned at the point Subject 1 was removed from the vehicle and joined Subject 1 after Officer B returned to the vehicle. Subject 1 stated that Civilian 1 then drove her Hospital to obtain medical treatment for her wrists, as Subject 1 related that both of her wrists were swollen and she had lost feeling in her left hand following the incident. Furthermore, Subject 1 reported that her right elbow had a scrape. Subject 1 also stated that her phone was broken with the

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screen cracked following the interaction with the police officers. Additionally, Subject 1 indicated that, at the time of this deposition, she had problems with her left hand including shaking and decreased strength. Furthermore, Subject 1 related that since her interaction with the police on July 17, 2015, she is now uncomfortable around men and had to stop working due to her wrist injury. (Att. 60)

Medical Records from July 17, 2015 were identified for Subject 1 from Hospital (located at XXXX W. Congress Parkway, Chicago, Illinois). The medical records indicated Subject 1 was diagnosed with pain in her left wrist and thumb. Provider notes from the nurse practitioner who treated Subject 1 related that Subject 1 stated she had been handcuffed, which cut into her left wrist with resulting numbness. Furthermore, it was reported that Subject 1 had tenderness and decreased sensation in her left wrist but was exhibiting a normal range of motion and no swelling. The provider notes also stated that Subject 1 is a marijuana user. Subject 1 was prescribed 600mg ibuprofen for pain, to be taken every six hours as needed. (Att. 21)

Similarly, a July 17, 2015 **CPD Crime Scene Processing Report** was obtained which included photos of Subject 1's reported injuries taken while she was at Hospital, as well as photos of Subject 1's broken cellphone. (Atts. 16, 18, 19, 27)

In an interview with IPRA on July 17, 2015, **Civilian 1** stated that on July 17, 2015, she and her friend, Subject 1, were walking to a store on North Homan Avenue. Civilian 1 reported that she was ahead of Subject 1 and entered the store while Subject 1 remained outside. According to Civilian 1, when she exited the store she observed an unmarked police SUV stopped a few feet away with Subject 1 handcuffed in the backseat. Civilian 1 related that a male Hispanic officer (later identified as Officer A) was in the vehicle while an African American male officer (later identified as Officer B) was outside of the vehicle searching for something on the ground. Civilian 1 reported that she heard Subject 1 repeatedly asking the officers why she had been stopped but the officers did not give Subject 1 an answer. Civilian 1 further related that she heard Subject 1 asking to be taken to the police station so she could file a complaint against the officers for conducting an illegal stop. Civilian 1 stated that she also heard Subject 1 complaining about the handcuffs. Furthermore, Civilian 1 said the officers forcibly pulled Subject 1 out of their vehicle and Civilian 1 observed swelling and bruises on Subject 1's left wrist so she and Subject 1 went to Hospital to obtain treatment for Subject 1. Civilian 1 also indicated that Subject 1's phone was "cracked up and broken" following the incident. Additionally, Civilian 1 related that two older black women were sitting on a front porch near the incident while it occurred. (Atts. 13, 14)

In a **Deposition** taken on 09/27/2016 for XX-XX-XXXXXX, **Civilian 1** related that on July 17, 2015, she and Subject 1 went to the home of Subject 1's friends, Civilian 2 and Civilian 3 but before entering the home, Civilian 2 gave them money to go to the store and buy a cigarillo. Civilian 1 and Subject 1 began walking to the store when Civilian 1 observed a police vehicle nearby. Furthermore, Civilian 1 indicated that the officers attempted to get Subject 1 to come over but when she refused, the officers pulled over and exited their car. Civilian 1 related that Subject 1 refused and kept walking so

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Civilian 1 also kept walking. Civilian 1 related that Officer B took and shattered Subject 1's cellphone and pushed Subject 1 against a gate while he patted her down. According to Civilian 1, Subject 1 instructed her to keep walking, which Civilian 1 did, while periodically turning back towards Subject 1. Civilian 1 related that she heard Subject 1 asking the officers why she was stopped but the officers did not give an answer. Civilian 1 stated that after he patted her down, Officer B handcuffed Subject 1 behind her back and she heard Subject 1 complain that the cuffs were too tight. Next, Civilian 1 related that Subject 1 was placed into the police vehicle on the rear passenger side by Officer B while Officer A searched the area around where Subject 1 was patted down. Additionally, Civilian 1 related that Officer B got in the car's driver's seat and drove past Civilian 1, turned into a parking lot, and eventually parked on Huron. Civilian 1 stated that after the car parked, she began walking back towards it when she heard Officer A state he could not find anything on the ground. Civilian 1 indicated she heard Subject 1 asking to be taken to a police station. Civilian 1 also related that she heard Officer B making sexual comments to Subject 1 as two unknown women walked past the police vehicle, as well as Subject 1 and Officer B arguing about Subject 1 wanting to be taken to the police station. Next, Officer A opened the car's rear doors but Subject 1 refused to exit the vehicle and she told the officers she wanted to go to the police station. Civilian 1 related that she then observed Officer A pulling Subject 1's arm out of the rear driver's side door with Officer B pulling Subject 1 out of the rear passenger's side door before Subject 1 was eventually pulled out of the rear driver's side door. Additionally, Civilian 1 related that after she was removed from the car, Officer B pushed Subject 1 against the vehicle and Subject 1 was complaining her wrists hurt. Furthermore, Civilian 1 stated she heard Subject 1 asking for the officers' names and badge numbers which they refused. Next, Civilian 1 said that Officer A removed Subject 1's handcuffs, pushed her away, and both officers got into the vehicle and drove away. Lastly, Subject 1 complained that her wrists were swollen and painful so Civilian 1 drove Subject 1 to the Hospital. (Att. 61)

In an interview with IPRA on July 21, 2015, **Witness Statements** were obtained from two women at XXX N. Homan Avenue who wished to remain anonymous. One of the women related that she lives at this residence and the other woman, who was visiting from Arizona, was present during the incident. Both women reported that they saw an interaction between Subject 1 and the police in which Subject 1 was handcuffed and placed into a black SUV that drove off momentarily and later returned. The women stated that they do not know Subject 1 nor did they observe Subject 1 resisting the officers. Neither woman could recall how long Subject 1 was detained by the police. The women described one of the involved officers as a light-skinned Hispanic male who approached them to ask if they know Subject 1, to which the women responded, "No." The women described the second officer as dark-skinned Hispanic male. The two women stated that they observed no

physical contact between the officers and Subject 1 except Subject 1 being handcuffed. A second resident at XXX N. Homan Avenue was identified only as Civilian 4. Civilian 4 related that she did not witness the incident between Subject 1 and the police officers but had heard several people on the street claiming they witnessed it. (Att. 15)

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In an interview with IPRA on November 13, 2015, **Officer B** related that he was initially unable to recall his encounter with Subject 1 from July 17, 2015, but refreshed his recollection after viewing the CPD Contact Card from the incident. Officer B stated that he and Officer A were assigned to the area near where the incident occurred due to recent gang conflicts involving shootings and drug trade. Officer B produced a CPD Contact Card from July 17, 2015, for "Jane Doe" and Officer B identified Subject 1's photo after she made her allegations against Officers B and A. According to Officer B, Subject 1 was loitering in a high narcotic area and quickly left after making eye contact with the officers, which raised their suspicion. Officer B related that he and Officer A were on patrol in a conflict zone between

three different street gang factions and the officers were concentrating their efforts on the area at which Subject 1 was standing. Furthermore, Subject 1 was standing on a corner known for drug trade and recent shootings. Officer B stated that at this location, there is typically a jacket hanging to advertise that drugs are being sold and he saw a jacket hanging nearby while she was standing in a location previously identified as a place where members of the Gangster Disciples sell drugs. According to Officer B, he and Officer A attempted to get Subject 1's identification but Subject 1 grew hostile towards the officers with her body language and verbal statements. Officer B stated that he and Officer A chose to detain Subject 1 because of her actions. Officer B further related that Subject 1 became upset and belligerent so they elected to detain her while they attempted to complete a field interview. Officer B stated that Subject 1 was handcuffed behind her back and placed in the rear of their black SUV. Officer B alleged that Subject 1 was using profanities and demanded that the officers arrest her so she could get paid by CPD.

According to Officer B, he and Officer A were unable to identify Subject 1 so they decided to release her but she refused to exit the vehicle and she demanded they arrest her. Officer B stated that either he or Officer A may have assisted Subject 1 in exiting the vehicle but he denied hitting her against the car. Officer B also related that Subject 1 never claimed her handcuffs were too tight on her wrist or that she was injured exiting the car. Officer B denied Subject 1's allegation that she was driven around in the police car but stated that she may have been in the car when they moved it out of the street. Additionally, Officer B denied making derogatory remarks concerning Subject 1's sexuality. Officer B could not recall if Subject 1 had a cellphone during their contact but related he would not purposely damage a citizen's phone. Furthermore, Officer B reported that he did not observe a witness accompanying Subject 1 when he and Officer A initially contacted Subject 1. According to Officer B, he did provide his contact information to Subject 1 as well as having his name and star number visible on his vest. (Atts. 28, 29)

In an interview with IPRA on 13 November 2015, **Officer A** stated that he and Officer B were on patrol near North Homan Avenue and he recalled stopping Subject 1 on July 17, 2015. Officer A related that he did not know Subject 1's identity but he was able to confirm a photo of Subject 1 provided by IPRA during his interview. Officer A reported seeing Subject 1 on July 17, 2015 standing on North Homan and she was still there approximately 5 — 10 minutes later, so they decided to approach her for a field interview. Officer A related that

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aside from her standing in a certain area, Subject 1 was not doing anything suspicious. According to Officer A, he and Officer B initially approached Subject 1 for loitering in a gang conflict and narcotics area, but she quickly attempted to leave after seeing the officers. Officer A reported that he and Officer B attempted to get Subject 1's identification from inside the vehicle but she continued walking away from the officers. According to Officer A, he and Officer B eventually stopped the car and both exited the vehicle to speak to Subject 1, who continued refusing to provide her name. Officer A related that due to his past experience in this area, he and Officer B choose to detain Subject 1 to determine why she was in the vicinity but she refused. Officer A stated that Subject 1 became verbally abusive, so the officers decided to handcuff her behind her back as a safety precaution. Officer A was unable to relate exactly what verbally abusive comments Subject 1 was making. Officer A also related that several neighbors shook their heads at him in a way he interpreted to mean Subject 1 did not live in the area and that these same neighbors later related that Subject 1 does not live the area. Furthermore, Officer A indicated that he may have moved his vehicle to get out of traffic while Subject 1 was inside, but it was not for a significant amount of time.

According to Officer A, he and Officer B placed Subject 1 in the vehicle while trying to identify her through the in-car computer. Officer A claimed that he observed Subject 1 making a movement with her hands before they approached her. Officer A related he has previously observed this type of action from individuals who are selling narcotics and trying to dispose of the contraband before talking to law enforcement. Officer A reported that both he and Officer B searched the area for narcotics but did not locate any. According to Officer A, he explained to Subject 1 that her being in high narcotics area was the reason for detaining her but this resulted in Subject 1 becoming more belligerent, yelling, and using profanities.

Officer A was unable to recall if it was he or Officer B who placed Subject 1 in their vehicle, but believed Subject 1 was detained for approximately 10 — 15 minutes. Officer A recalled Subject 1 being belligerent and talking about getting money from CPD. According to Officer A, he advised Subject 1 that she has a right to file a complaint. Officer A further related that he provided his name and star number to Subject 1. Additionally, Officer A indicated that he and Officer B attempted to guide her by her arm as she exited the vehicle. Officer A also stated that Subject 1 never complained that she was injured nor did he hear Officer B make any derogatory comments to Subject 1 about her sexuality. Officer A did not recall either himself or Officer B taking Subject 1's cellphone or if Subject 1 even had a phone during the incident. Officer A reported that Subject 1 continued to use profanity while she walked away from the area. Officer A explained that he filled out the CPD Contact Card with the name Jane Doe because Subject 1 refused to identify herself and they were unable to identify Subject 1 through other means. (Acts. 30, 31)

In Depositions taken on December 2, 2016 in civil case XX-XX-XXXXX **Officer A** and **Officer B** testified to factually similar versions of their interviews taken by IPRA. Officer B testified that while he was on a narcotics and gang patrol, he observed Subject 1 on the corner of

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Huron and Homan. The officers then left the area and when they returned five minutes later, they saw Subject 1 still on the same corner. Based on their mission of narcotics and gang suppression, their experience and knowledge of the area, and their observations of Subject 1 remaining at the corner after a CTA bus came and left, the officers decided to approach Subject 1. Both Officers B and A agree that Subject 1 had not committed any crimes nor had they observed any hand to hand transactions or suspected narcotics activity by Subject 1. Upon approach, the officers both testified that they observed Subject 1 make a movement with her arm as if to drop something and that she walked away from the officers upon seeing them. Both officers admitted they did not see any object dropped or otherwise propelled from Subject 1's hand. Based on the suspected dropping of narcotics, the officers attempted to detain Subject 1 and eventually succeeded. Officer B related the Officer A was driving and he pulled the vehicle to the side of the street and both officers exited the vehicle. Officer A related that prior to stopping the vehicle, they were driving alongside Subject 1 and trying to talk to her but she was ignoring them. After refusing to provide her identification or name, both officers related that Subject 1 became verbally aggressive towards the officers, was swinging her arms, and told the officers to take her to the police station. Officer A described Subject 1's body language as "aggressive potentially," so to "diffuse the situation, not to let it boil over into anything else," he detained her in handcuffs. Officer B denied that the handcuffs were placed on Subject 1 too tightly or that Subject 1 complained that the handcuffs were uncomfortable. Officers B and A separately took 5 to **10** minutes to search the area while the other officer waited with Subject 1 handcuffed and in the squad car and tried to identify Subject 1. The officers also related that the vehicle was moved to get out of the way of traffic and was parked on Huron. Officer B denied having performed a pat-down on Subject 1 or commenting on her sexuality. Additionally, Officer B related that nothing was found following a search for contraband and Subject 1 was free to go. According to Officer B, Officer A helped Subject 1 out of the vehicle by the arm and her handcuffs were removed. Officers B and A both denied using force to get Subject 1 out of the vehicle or while removing her handcuffs. Furthermore, both officers stated that while they were releasing Subject 1, she asked for their star numbers and both officers gave their last names and star numbers. Lastly, the officers got back into their vehicle and drove away. (Att. 56)

A CPD Contact Card was identified for Officers B and A's investigatory stop of Subject 1 on July 17, 2015. Subject 1 is listed as "Jane Doe" in this document, as she reportedly refused to provide her name to the officers. According to this document, Subject 1 was stopped near XXX N. Homan for loitering at a corner known for narcotics sales.² The report states that Subject 1 looked at the officers and started quickly walking away. (Att. 37)

OEMC Radio Transmissions were located from July 17, 2015, pertaining to Beat **XXXXD**, which was staffed by Officers B and A at the date and time in question. At 1459, **XXXXD** is heard advising dispatch, "XXXXD, narcotics dispersal at Homan and Huron," and later providing a specific address of XXX N. Homan to dispatch. From 1430 until 1459, over the course of approximately 20 minutes, no radio communication was heard from **XXXXD**. (Atts. 32, 33)

² This CPD Contact Card states that the incident occurred at XXX S. Homan. In his interview with IPRA on November 12, 2015, Officer A related that this was a typographical error and the stop actually occurred near XXX N. Homan.

Approved:

COPA Investigator

COPA Supervising Investigator

V. ANALYSIS

I. Officers B and A Stopped Subject 1 Without Justification

The Fourth Amendment of the United States Constitution and the Illinois Constitution of 1970 guarantee the right of individuals to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Police-citizen encounters are categorized into three tiers: (1) an arrest of a citizen, which must be supported by probable cause; (2) a temporary investigative seizure conducted pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968) and 725 ILCS 5/102-15, which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) a consensual encounter, which does not implicate any Fourth Amendment interests. *People v. McDonough*, 239 Ill. 2d 260, 268 (2010).

A person is seized when her freedom of movement is restrained by physical force or a show of authority. *People v. Almond*, 2015 IL 113817, ¶ 57. The test is whether a reasonable person would conclude, in light of the totality of the circumstances, that she is not free to leave. *Id.* The following factors, outlined in *United States v. Mendenhall*, 446 U.S. 544, 553 (1980), indicate a seizure has occurred: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person; or (4) using language or tone of voice compelling the individual to comply with the officer's requests. *Almond*, 2015 IL 113817, ¶ 57. "[T]he absence of any of the *Mendenhall* factors is 'highly instructive' on the issue of whether a seizure has occurred." *Id.*

Thus, the first step in the analysis is to determine whether Officers B and A seized Subject 1. In this case, the interaction between Officers B and A and Subject 1 clearly went beyond a consensual encounter, as it is undisputed that Officers B and A handcuffed Subject 1 and placed her in a police vehicle. See *People v. Almond*, 2015 IL 113817, ¶ 57 (a person is seized within the meaning of the Fourth Amendment when, considering the totality of the circumstances, a reasonable person would believe he is not free to leave). Officers B and Officers A also readily admitted that Subject 1 was not free to leave and that they had detained her.

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Accordingly, we must consider whether Officer B possessed a reasonable, articulable suspicion that Subject 1 was engaged in criminal activity such that Officer B was entitled to perform a *Terry* stop. The contact card states that the officers observed Subject 1 loitering at a corner known for narcotics sales. The officers then pulled up to the corner as Subject 1 looked in the officers' direction and quickly turned away, walking in the opposite direction. The officers approached for a field interview and Subject 1 refused to give information to conduct a name check. Mere presence in a high-crime area is insufficient to support a reasonable, articulable suspicion. *Illinois v. Wardlow*, 528 U.S. 119, 145 (2000). However, both officers testify that they observed Subject 1 drop an object they believed consistent with narcotics packaging. The fact that the Officers detained Subject 1 for 10 or more minutes and both individually searched for contraband supports their assertion they believed they observed Subject 1 drop something. While it is problematic that the officers failed to document this observation in the contact card, it is more likely than not that, as the officers asserted in the civil law suit, the observation of the dropped item was a sufficient basis for the *Terry* stop. However, while a brief detention was permissible under *Terry*, the officers absolutely did not have probable cause for an arrest. Indeed, the officers repeatedly stated that Subject 1 was not under arrest.

The next step in the analysis is to determine whether Officers B and A handcuffing Subject 1 and placing her into a police vehicle constituted an arrest, which must be supported by probable cause or an investigative stop, which only requires a reasonable, articulable suspicion of criminal activity. "A restriction of movement that is brief may amount to an arrest rather than a *Terry* stop if it is accompanied by use of force usually associated with an arrest, unless such use of force was reasonable in light of the circumstances surrounding the stop." *People v. Johnson*, 408 Ill. App. 3d 107, 113 (2d Dist. 2010) (citing *People v. Delaware*, 314 Ill. App. 3d 363, 370 (1st Dist. 2000)). Courts have found that "handcuffing is the type of action that may convert an investigatory stop into an arrest because it heightens the degree of intrusion and is not generally part of a stop." *See id* (citing *People v. Wells*, 403 Ill. App. 3d 849, 857 (1st Dist. 2010); *Delaware*, 314 Ill. App. 3d at 370; *People v. Tortorici*, 205 Ill. App. 3d 625, 628 (3d Dist. 1990)). But handcuffing and placing an individual into the back of a police vehicle does not automatically convert an investigatory stop into an arrest. *See, e.g., United States v. Stewart*, 388 F.3d 1079, 1084-85 (7th Cir. 2004); *People v. Starks*, 190 Ill. App. 3d 503, 509 (2d Dist. 1989).

In both the *Tortorici* and *Delaware* cases, the court held that the handcuffing converted a justified *Terry* stop into an arrest because at the time of handcuffing the officers had no indication that the suspect was armed or dangerous. 205 Ill. App. 3d 625, 628 (3d Dist. 1990); 314 Ill. App. 3d 363, 370 (1st Dist. 2000). In contrast, the court in *Starks* held the handcuffing did not convert the *Terry* stop into an arrest because the officers believed the defendant was armed and matched a robbery suspect's description. 190 Ill. App. 3d 503, 509 (2d Dist. 1989). A review of the case-law clearly demonstrates that in the instant case, Officers B and A converted the *Terry* stop into an arrest by handcuffing Subject 1 and placing her into a police vehicle where the only indication of criminal activity the officers had was potentially the possession of a controlled substance.

According to available details provided by both Officer B and Officer A, Subject 1 was held to determine her identity for a name check and not in suspicion of committing a crime. The officers admitted Subject 1 was not engaged in hand to hand transactions or any suspected narcotics activity. It was not until the officers asked Subject 1 to stop and approached her that they

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observed the alleged dropping of an item. The CPD Contact Card located for Subject 1 does not detail any suspicion about her selling or possessing drugs and no drugs were found on or near Subject 1. Even though Subject 1 was observed in an area known for narcotics sales and she refused to stop and talk to the officers or provide her name, available facts do not indicate the officers had a reason to arrest her. In addition, Officer B and Officer A handcuffed Subject 1 as they searched the area and placed her in their squad car. In fact, the Officers B and A did not even perform a protective pat down of Subject 1 further indicating the lack of danger in the instant case. Subject 1 stated that she was detained for 45 minutes while the officers estimated roughly 10 minutes. Either way, Subject 1 was detained, handcuffed and placed in a police vehicle for 10 to 45 minutes without probable cause of criminal activity, in violation of CPD general orders and the 4th Amendment..

COPA recommends a finding of **Sustained for Allegation I.** against **Officer B**, that he stopped Subject 1 without justification. According to Chicago Police Department Special Order SO4-13-09 regarding the Investigatory Stop System, officers can only temporarily restrict an individual's movement as long as needed to confirm or refute if reasonable suspicion exists and a person cannot, "be detained solely for the purpose of obtaining the results of a name check of the subject." According to available details provided by both Officer B and Officer A, Subject 1 was held to determine her identity for a name check and not in suspicion of committing a crime. The CPD Contact Card located for Subject 1 does not detail any suspicion about her selling drugs and no drugs were found on or near Subject 1. Even though Subject 1 was observed in an area known for narcotics sales and she refused to stop and talk to the officers or provide her name, available facts do not indicate the officers had a reason to detain her.

COPA recommends a finding of **Not Sustained for Allegations 2 — 6** against **Officer B**, that he threatened to file false criminal charges against the complainant, made derogatory comments regarding Subject 1's sexual orientation, failed to provide his name and star number when requested by Subject 1, handcuffed Subject 1 too tightly causing injury to both of her wrists, damaged Subject 1's cellphone, and injured Subject 1's right upper arm when he and Officer A removed Subject 1 from their police vehicle. There is insufficient evidence to determine if these actions occurred. As far as proving or disproving Subject 1's allegations regarding Officer B making derogatory comments and failing to provide his name and star number, it is the officers' statements against Subject 1's. With respect to credibility of Subject 1 or Officers A and B; both Subject 1 and the officers testified credibly and relatively consistently with respect to the facts regarding the initial stop and detention. In contrast, Civilian 1's testimony during her deposition differs from her interview with IPRA, therefore undermining her credibility. Additionally, while Subject 1 obtained medical treatment following her investigatory stop by Officers B and A, it does not appear she suffered any significant injuries. While Subject 1 claims she has lasting pain no further records for follow-up medical attention were produced. Moreover, the severity of the injuries purported by Subject 1 was not supported by her medical documents further undermining the credibility of those claims. Finally, COPA obtained CPD evidence photos of what Subject 1 reported was her cellphone that was broken by Officer B. It was not possible to determine from these photos and from available details exactly when and how the cellphone was broken. Based on the discrepancy between the officers' account and that of Subject 1, the lack of tangible and independent evidence supporting the claims, and the credibility of both the officers and Subject 1, there is insufficient evidence to prove or disprove the allegations.

CIVILIAN OFFICE OF POLICE ACCOUNTABILITY

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COPA recommends a finding of **Unfounded** for **Allegation 8** against **Officer B**, that he failed to document his contact with Subject 1. The Officers authored a CPD contact card for the interaction evidenced in attachment 37 of the above captioned Log.

As set out above, COPA recommends a finding of **Sustained** for **Allegation 1** against **Officer A**, that he stopped Subject 1 without justification. According to Chicago Police Department Special Order SO4-13-09 regarding the Investigatory Stop System, officers can only temporarily restrict an individual's movement as long as needed to confirm or refute if reasonable suspicion exists and a person cannot, "be detained solely for the purpose of obtaining the results of a name check of the subject." According to available details provided by both Officer B and Officer A, Subject 1 was held to determine her identity for a name check and not in suspicion of committing a crime. The CPD Contact Card located for Subject 1 does not detail any suspicion about her selling drugs and no drugs were found on or near Subject 1. Even though Subject 1 was observed in an area known for narcotics sales and she refused to stop and talk to the officers or provide her name, available facts do not indicate the officers had a reason to detain her.

COPA recommends a finding of **Not Sustained** for **Allegation 2** against **Officer A**, that he injured Subject 1's right upper arm when he and Officer B removed Subject 1 from their police vehicle. There is insufficient evidence to determine if this action occurred. While Subject 1 obtained medical treatment following her investigatory stop by Officers B and A, it does not appear she suffered any significant injuries. The severity of the injuries purported by Subject 1 was not supported by her medical documents.

COPA recommends a finding of **Unfounded** for **Allegation 3** against **Officer A**, that he failed to document his contact with Subject 1. A CPD Contact Card was created for the officers' encounter with Subject 1, documenting the interaction.

Deputy Chief Administrator,
Approved:

FINDINGS

Officer B

Allegation 1 — Sustained
Allegation 2 — Not Sustained
Allegation 3 — Not Sustained
Allegation 4 — Not Sustained
Allegation 5 — Not Sustained
Allegation 6 — Not Sustained
Allegation 7 — Not Sustained
Allegation 8 — Unfounded

Officer A

Allegation 1 — Sustained
Allegation 2 — Not Sustained
Allegation 3 — Unfounded